

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 461 of 1990

Ganpati Deosthan, Angapur

District Satara.. ... Appellant

V/s

1. Chief Executive Officer,

Z.P. Satara

2. Sarpanch, Gram Panchayat

Angapur, Satara

3. Chairman, Vividh Karyakari

Society, Angapur, Satara ... Respondents

Mrs Anjali Helekar holding for Mr.S.M.Dharap for
Appellant

Mr.M.B.Mehere for Respondent no.1

Mr.S.V.Likhite for Mitin Jamdar for Respondent
nos.2 and 3

CORAM:S.R.SATHE, J.

DATED:5th August 2004

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order
passed by the Court of 3rd Additional District
Judge, Satara in Regular Civil Appeal No.40 of

1985 whereby the order passed by the III Joint Civil Judge, J.D., Satara dated 30-8-1984 directing permanent injunction against defendants was set aside by allowing the appeal partly, the original plaintiff has filed this Second Appeal.

2. Brief facts giving rise to this appeal are as under :

. In G.P.No.126 of village Angapur, there is one ancient temple of God Ganesh. According to the plaintiff the said temple was owned by Devasthan and plaintiff's predecessors were given right of vahiwat in respect of the said temple and for performing pooja-archa the land surrounding the temple was given to him. Some time in the year 1980 the plaintiff found that defendant nos.1 to 3 had started some construction in the open space adjoining to Ganesh temple. Plaintiff, therefore, issued notice to defendants and called upon them to remove the construction and hand over the possession of the land to him. In spite of the receipt of notice, the defendants did not stop the construction. Hence plaintiff filed Regular Civil Suit NO.446 of 1990 for declaration that the suit temple as well as the open space around the suit temple is owned and possessed by the

plaintiff and for permanent injunction restraining the defendants from carrying out any construction in the open space.

3. The defendant no.1, Chief Executive Officer, Zilla Parishad, Satara filed its written statement and opposed the suit claim by raising several contentions. They contended that the suit property was never owned by the plaintiff or his ancestors nor it was in their exclusive possession. On the contrary the suit land is owned by defendant nos.1 and 2. The defendant no.1 further contended that previously also plaintiff had made an attempt to claim the property. However, he failed in the said attempt and Assistant Charity Commissioner had in fact directed him to get the suit temple registered as a public trust. The defendant also raised contention regarding non issuance of necessary statutory notice to defendant nos.1 and 2. Hence all these grounds defendant no.1 prayed for dismissal of the suit. Defendant nos.2 and 3 did not file any written statement.

4. Taking into consideration the pleadings of the parties the trial Court framed issues. After considering the evidence adduced by both the parties the trial Court came to the conclusion that the suit temple as well as open space

surrounding the suit temple is not owned by the plaintiff and the plaintiff is not entitled to get declaration as prayed for. The trial Court however, observed that the plaintiff is having vahiwat of the open space around the suit temple and that by virtue of Sanad granted to his ancestors, Deshmukh family is having only right to manage the temple and by carrying out construction on the said open space the defendants are in fact causing obstruction to the plaintiff's right and vahiwat. He therefore granted permanent injunction restraining defendant no.1 carrying out the construction on the said open space but rejected the plaintiff's claim for declaration that property belongs to Deshmukh family.

5. The original defendants filed Regular Civil Appeal No.40 of 1985 and challenged the order of injunction. The original plaintiffs filed Cross Objection and challenged the order of rejection of claim of declaration. After hearing the arguments of both the learned Advocates the first Appellate Court came to the conclusion that the learned lower Court properly considered the entire material on record and rightly observed that the plaintiff has failed to prove his title to the suit property and as such was not entitled for declaration. He, therefore,

confirmed the said finding. He however observed that there was nothing on record to indicate that the plaintiff was having actual possession of the open land surrounding the temple and on the contrary from mutation entry no.3374 dated 4-9-1946 it appears that the land in question is in fact owned and possessed by the defendants. He therefore, set aside the finding recorded regarding permanent injunction and entire suit of the plaintiff was dismissed.

6. Being aggrieved by the said order the original plaintiff has filed this second appeal. The only substantial question of law involved in this matter is whether the order passed by the appellate court holding that the plaintiff has failed to prove his title and possession of the suit property and suit regarding title in respect of trust property ought to have been filed before the Charity Commissioner is legal or not.

7. In this appeal before me, Mrs Helekar, learned Advocate for the plaintiff has urged only two points. Firstly, she submitted that learned lower court has not properly appreciated the evidence on record and wrongly ignoring the Sanad held that the plaintiff is not the owner of the suit land. Secondly, she canvassed

before me that there was no reason for the appellate Court to hold that finding recorded by the lower Court with regard to possession of the plaintiff in respect of the suit land was incorrect particularly when defendants had also not adduced any specific evidence to show their possession. As against this the learned advocate for the Respondents supported the order passed by the first appellate Court and also submitted that recently the Joint Charity Commissioner has passed order whereby the Trust has been registered in respect of temple in question and as such the present plaintiff has no right to proceed with the appeal and only the trustees of the said public trust can decide whether the appeal is to be prosecuted further.

8. At the outset must be mentioned that the plaintiff is in fact not clear about his right in respect of the suit property. If we peruse the plaint Exh.1 we find that therein the plaintiff has in fact clearly stated that the temple in question is owned by Ganapati Devalaya and subsequently again the plaintiff has said that the said temple is owned by him and as such he claimed relief of declaration. For that purpose he has placed reliance on Sanad which has been granted in favour of Deshmukh family. However, the learned trial Court has properly

considered the said Sanad and has rightly held that by virtue of the said Sanad no proprietary rights have been given to the plaintiff and it can be said that the plaintiff has become owner of the said property. All that it can be said is that plaintiff has been given right to have vahiwat of the said temple and certain land was given to him so as to enable him to meet the expenses in respect of pooja-archa etc. of deity. The plaintiff could not adduce any documentary evidence to show that the plaintiff is having title as a owner in respect of the suit temple. So, both the Courts have correctly held that the plaintiff has failed to prove that the plaintiff is the owner of the suit temple. Not only that but both the Courts have also observed that there is nothing on record to indicate that land surrounding the temple was also owned by the plaintiff or plaintiff's ancestors at any time. Incidentally it may be noted here that even according to the plaintiff an application was filed by him before the Charity Commissioner whereby the request was made to register the temple as a public trust property. Accordingly now the trust has been registered. However, the learned advocate for the plaintiff strenuously argued before me that open space which is around the suit temple is excluded from the property of the trust and as

such it can be said that the said property is owned by the plaintiff. However, I for one do not agree with this submission. Merely because the open space surrounding the temple is not specifically mentioned in the trust property we cannot jump to the conclusion that open space surrounding the temple is owned by the plaintiff, or it is the same property which has been given to plaintiff's ancestors by virtue of Sanad. In fact it was absolutely essential for the plaintiff to adduce some cogent and convincing evidence regarding identification of the property received by plaintiff's ancestors by virtue of said Sanad. There is no evidence to show plaintiff's ownership of the open land. So also he has not produced any documentary evidence to show that open land surrounding the temple was in his actual possession. On the contrary from perusal of mutation entry No.3374 dated 4-9-1956 it appears that the land in question has been given to the defendant no.2 by virtue of possession receipt dated 3-8-1954. So, taking into consideration all these aspects, the first appellate court came to the conclusion that the plaintiff is not entitled to get declaration and injunction as prayed for. He therefore dismissed the plaintiff's suit. From perusal of the judgment of the first appellate court it cannot be said that first appellate

court has not taken into consideration the evidence adduced by both the parties nor it can be said that findings arrived at by the lower appellate court are erroneous. Hence I have no hesitation to hold that there is absolutely no necessity to interfere with the findings recorded by the first appellate court. In this view of the matter, there is no substance in this appeal. The appeal is dismissed with costs.

(S.R.SATHE, J.)